The Planning Inspectorate

Appeal Decision

Site visit made on 4 March 2014

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 April 2014

Appeal Ref: APP/B2355/C/13/2207143
Land at Higher Deerplay Farm, Burnley Road, Bacup, Lancashire, OL13 8RD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Carole Young against an enforcement notice issued by Rossendale Borough Council.
- The Council's reference is 163/2010.
- The notice was issued on 19 September 2013.
- The breach of planning control as alleged in the notice is: without the benefit of planning permission the siting of a permanent prefabricated building and associated gas cylinder and change of use of the land for residential purposes.
- The requirements of the notice are:
  i. Remove the prefabricated building from the Land
  ii. Remove the gas fuel cylinder from the Land and the connecting pipe work to the prefabricated building
  iii. Cease the use of the land for residential purposes
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act as amended.

Decision

1. The enforcement notice is corrected and varied by: a) deleting the text of paragraph 3 in its entirety and substituting 'without the benefit of planning permission, the siting of a permanent prefabricated building with the associated siting of a gas cylinder and material change of use of land for residential purposes'; and b) deleting 56 days and substituting six months as the period for compliance. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Applications for costs were made by Mrs Carole Young against Rossendale Borough Council – and by the Council against Mrs Young. The applications are subject to separate decisions.

3. The land subject to the notice lies to the south east of the farmyard at Higher Deerplay Farm. It is a small plot which surrounds and includes the alleged prefabricated building and gas cylinder; the building is used as a dwelling by one of the appellant's sons and his family.[1] The alleged breach of planning control should be more clearly worded and particularly refer to the associated *material* change of use of land. I shall exercise my powers under s176(1)(a) of the 1990 Act to correct the allegation, since doing so would cause no injustice to either party.

[1] All references to the appellant's son are to the one stated in written evidence to occupy the alleged building.

The Appeal on Ground (c)

4. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant and the standard of proof is the balance of probabilities. The appellant argues that the alleged building – or portakabin – is a temporary building that is granted planning permission under Article 3, Schedule 2, Part 4, Class A of the *Town and Country Planning (General Permitted Development) Order 1995* as amended (GPDO). It specifies that the provision on land of buildings or moveable structures required temporarily in connection with and for the duration of operations being or to be carried out on that land or adjoining land is permitted development (PD).[2]

Is the alleged building required temporarily in connection with and for the duration of operations being or to be carried out?

5. Planning permission (ref: 2010/0054) was granted on 23 March 2010 for the conversion of a barn to be used as part of the [existing] dwelling at Higher Deerplay Farm. The portakabin was moved onto the land around July 2010.[3] In a letter to the Council dated 1 December 2011, the appellant described works that had taken place to the barn: digging out the ground floor to allow for inspection of foundations and a new floor; digging a trench and laying an electricity cable; and removing floors at first floor level and animal pens.

6. The appellant argues, with reference to other appeals, that the works to the barn constituted a 'material start' on implementation of the 2010 permission.[4] As noted in the West Hall Farm case, operations do not need to require planning permission or even constitute 'development' in order to represent a material start. The key question is whether, as matter of fact and degree, the operations were comprised in the development for which permission was granted – or they were *de minimis*.

7. The appellant has provided few details of when works took place to the barn, and indeed of its appearance before as well as after. However, the Council has not disputed that she undertook the operations she described – only the significance of them. I find that, between March 2010 and December 2011, works were likely carried out to the barn which, when taken together, were minor but not *de minimis*. They represented a material start to implement the 2010 permission.

8. However, there is no evidence of any operations since December 2011. A letter from the appellant dated 8 March 2012 stated that reclaimed beams and stone had been found, but not that they had been used. In January 2013, the appellant held 'pre-commencement' discussions with Building Control – or submitted a Building Regulations application (ref: BR24263). A letter received from the appellant in May 2013 indicated that works would start when the weather improved.[5] Yet by the dates of my visit and so presumably the notice, the barn was still derelict.

9. Part 4 does not limit the time for completion of operations, but it does limit the siting of temporary buildings to the 'duration' of works. I allow that self-build barn conversions can take some years, but my concern is that the works undertaken before December 2011 were not continued or re-commenced before the notice was issued. As a matter of fact, operations ceased and are not being carried out.

[2] Schedule 1, paragraph 9 of the *Caravan Sites and Control of Development Act* 1960 provides that a site licence is not required for the use of land as a caravan site in relation to building operations, but that use is not alleged.
[3] As stated by the appellant in her response of 25 January 2011 to a Planning Contravention Notice (PCN).
[4] In the appeal (ref: APP/T5150/X/09/2100225) pertaining to Wakeman Road, it was found that excavations by a party wall, made to explore foundation requirements, amounted to a start of an approved house extension. In appeals (refs: APP/Y3615/X/07/2053182 and C/07/2046060) relating to West Hall Farm, the Inspector found that demolition of a lean-to and the removal of cow stalls represented a material start on a barn conversion.
[5] I understand that the 'May 2013' letter was sent in April 2013, but it is undated.

10. The appellant has recently sought and obtained a new planning permission for the barn (ref: 2013/0441), so that it may be converted to a separate dwelling instead of an extension to the farmhouse. By the appellant's admission, however, the 2013 permission would result in few physical changes to the barn compared to the 2010 scheme. Making different plans for the use of the barn would not have prevented works from continuing after December 2011.

11. Another permission (ref: 2011/0425) was granted on 30 September 2011 for the erection of an agricultural building at Higher Deerplay Farm. As noted above, the portakabin was sited on the land before that date. The provision of a temporary building in connection with operations is not permitted under Part 4, Class A if permission is required for the works but not granted.

12. I saw that the only operations undertaken for the building have been to construct the portal frame – and this is incomplete and damaged. The Council suggests that the works are recent, and indeed the appellant did not mention any start on the building in her May 2013 letter, or another dated 30 September 2013. Thus, it is possible that the agricultural building was commenced after the notice was issued, and if this is the case, the operations could not render the portakabin PD at the date of the issue of the notice. In any event, there is no evidence that works have continued – or why they would necessitate the temporary siting of the portakabin.

13. As noted above, Part 4, Class A would allow for the siting of the portakabin for operations 'to be' carried out. The various permissions are material, but the appellant has not confirmed when works to the barn or farm building will re-start. Her statement that works will be 'speeded up' is too vague. Furthermore, the appellant has said that her son will 'erect the components' of the agricultural building, but she has not described what role he will have in the barn conversion, only that he will be 'directly employed'.

14. The May 2013 letter stated that 'builders' were 'booked and to start when the weather improves' – suggesting that outside contractors would undertake the barn conversion. There is no evidence to back the appellant's claim that builders were required to manufacture and deliver materials – and that would not explain the use of the word 'start' or the relevance of weather conditions.[6]

15. Even if the appellant's son will undertake the building works, that is not enough to make the ground (c) appeal. He plans to move into the barn, and it is not unusual for people to live in temporary accommodation while building their own home. But they do not always do so, or live on the same site. There may not be room for the son and his family in the farmhouse but if they are living in the portakabin basically as a stop-gap, I would have expected to see more progress on the barn conversion since December 2011 – or more concrete plans to resume the works.

16. The appellant has given reasons why the barn conversion stalled, including access to finance and inclement weather. However, she has not justified retention of the portakabin while the operations are in abeyance. If the family is not in a position to progress the developments approved, they would have my sympathy, but the siting of the portakabin would not be PD under Part 4, Class A.

The position of the alleged building

17. The Council suggests that the portakabin is too far from the barn to be associated with the conversion. I would not dismiss the appeal on this ground. Part 4, Class A allows for temporary buildings on land adjoining that subject to operations. The

[6] With regard to materials for the barn, I have noted that reclaimed stone had been found before 8 March 2012. The May 2013 letter showed that doors and windows had been 'bought in' already.

portakabin is within the same farm holding and easy walking distance of the barn and agricultural building. I can understand why the occupier of the portakabin would wish to live at a safe distance from the farmyard and what are claimed to be building sites. That said, and as noted above, the appellant has not shown that the portakabin is temporarily required at all.

18. The Council wrote to the appellant on 11 December 2012 to advise that the portakabin was too far from the barn to be deemed a temporary residence during the conversion works. I have found against the Council on this issue, but the appellant could not have assumed from the letter that siting would be the only reason why the portakabin might not be PD. The Council also asked what works had been undertaken and which building inspector was involved. It was only after this that the appellant approached Building Control. Her letter of May 2013 did not say why the portakabin was required when no works had taken place since 2011.

Can the pre-fabricated building be regarded as a permanent building?

19. Whether the portakabin is a permanent building as alleged is a matter of fact and degree, to be considered with regard to size, permanence and physical attachment. In *R (oao Wilsdon) v FSS & Tewkesbury BC* [2007] JPL 1063, it was held that the larger and more permanent the building, the less likely it is to be genuinely required temporarily in connection with the carrying out of development.

20. The portakabin is of a size that it was likely brought to or built on site and it is not unduly large for temporary accommodation. However, it has been in place for nearly four years, during which time there have been few operations to convert the barn or construct the farm building. Yet works have taken place to the portakabin so that it appears permanent: it seems secured to the ground and it is connected to mains electricity, satellite TV and by pipes to the gas cylinder which stands upon a concrete base.[7] It has been fitted with a new kitchen and bathroom, and decorated as a family home. The land around the portakabin is partly enclosed and used for parking and the siting of garden furniture – for domestic purposes.

21. It was also held in *Wilsdon* that it is for the appellant to show why a building is reasonably required and her intentions are relevant. She has stated that her son is directly involved in the farm and he must live here for his animals.[8] She asked in her letter of 8 March 2012 if her son would be 'better going in for planning for an agricultural tenancy'. This evidence suggests that her son intended to stay on the site, whether or not the barn conversion would be re-started.

22. The appellant stated on the PCN simply that the portakabin is used for 'living'. She was not professionally represented at that time, but I would still have expected, if this was the case, some indication that the structure was temporary or related to the barn conversion. On the balance of probabilities and as a matter of fact and degree, the portakabin is sited as a permanent building and there has been an associated material change of use of land to residential use.

Conclusion

23. The notice refers to documents submitted with the 2010 application to the effect that the barn conversion was required to house the appellant's disabled mother. The appellant now claims that the accommodation would be for her mother as well as her son and his family. It makes little difference if there are discrepancies in

[7] I saw that a porch/utility room has been added to the portakabin, but I have discounted it for this appeal, even though it could add to the permanence of the building, because it was not in place when the notice was issued.
[8] It forms no part of the appellant's case that the siting of the portakabin is PD under Part 6 of the GPDO, which relates to agricultural buildings and operations.

the evidence on this issue; conditions are not imposed on the 2010 or 2013 permissions to restrict occupancy of the barn, and the key question is whether the portakabin is required for a construction worker.

24. I conclude that the appellant has not shown that the portakabin is temporarily required in connection with and for the duration of operations being or to be carried out. On the balance of probabilities and at the date of the issue of the notice, the portakabin was not permitted by Part 4, Class A of the GPDO. Development has taken place as alleged for which planning permission is required but not granted, in breach of planning control. The appeal on ground (c) fails.

25. The appeal decision (ref: APP/B2355/X/08/2092031) relating to Duckworth Bank Farm adds a little weight to the above conclusion. In that case, the siting of a residential home was found to not be PD under Part 4, Class A because rebuilding works were not being carried out as a matter of fact and there was no extant permission. There are extant permissions in this case but that does not alter the lack of evidence that the portakabin is required for building operations.

The Appeal on Ground (f)

26. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The appellant suggests that the notice should be varied to allow for the portakabin to be moved. This argument is predicated on an assumption that the building would be PD if it was in a different location. Notwithstanding the Council's letter of 11 December 2012, the portakabin is not PD because it is not required in connection with and for the duration of operations being or to be carried out.[9]

27. Whether or not the Council should have negotiated the siting of the portakabin is not relevant as to whether the notice could or should be varied. The appellant has not proposed any other lesser steps to remedy the breach of planning control, and that is the purpose of the notice. I find that the requirements of the notice are not excessive. The appeal on ground (f) fails.

The Appeal on Ground (g)

28. This ground is that the period for compliance with the notice falls short of what is reasonable. The appellant requests that the notice is varied to extend the time for compliance to three years or until the barn conversion and agricultural building are completed – whichever period is the shorter.

29. A notice cannot be varied to allow an open-ended period for compliance. It has not been shown why three years would be needed for the building works – or that they would create a temporary requirement for the portakabin. Had I found in favour of the appellant on that point, the appeal would have succeeded on ground (c), the notice would have been quashed and ground (g) would not have been considered.

30. I also find that three years would be a far greater period for compliance than would normally be afforded by any enforcement notice. If the appellant wishes to retain the portakabin for that long, it would have been appropriate for her to have sought temporary planning permission by making an appeal on ground (a).

31. That said, and although this matter was not raised by the appellant in relation to ground (g), I have noted that the portakabin is used as a family home. The PCN

[9] Moreover, the appellant has not suggested where the portakabin should be sited, and the land subject to the notice does not include the whole farm. It would not be possible to require that the portakabin is moved without varying the notice to seek the submission and approval of a relocation scheme. S173(3) of the 1990 Act is clear that an enforcement notice must specify the steps to be taken. A notice which requires the submission of a scheme would be a nullity or bad on its face, since it would introduce unacceptable uncertainty as to what steps are required to remedy the breach of planning control – *Payne v NAW & Caerphilly CBC* [2007] JPL 117.

confirms that the appellant's son has children, and I saw a child's bedroom in the portakabin. The Council argues that the son and his family could move into the farmhouse but it is occupied by the appellant and her husband.

32. It can also be construed from the appellant's letters that her son might wish to make a case – if this appeal fails – for the siting of the portakabin on the basis of agricultural need. I cannot speculate on the outcome of any such application, but 56 days would not give the appellant's son reasonable time to look for alternative accommodation and/or to negotiate with the Council.

33. I find that a compliance period of six months would strike an appropriate and proportionate balance between the private interests in this case, and the public interest in remedying the alleged breach within an expedient period. To this limited extent, the appeal on ground (g) succeeds.

Conclusion

34. For the reasons given above and with regard to all other matters raised, I conclude that the appeal should be dismissed.

Jean Russell

INSPECTOR